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Before the
Federal Communications Commission
Washington, D.C. 20554

APR 14 2004

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 02-73
Table of Allotments,)	RM-10356
FM Broadcast Stations.)	RM-10551
(Cameron, First Mesa, Flagstaff, Dewey-)	RM-10553
Humboldt, Parker, Bagdad, Globe, Safford, Grand)	RM-10554
Canyon Village, Gilbert, and Chino Valley,)	
Arizona))	
)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 12, 2004**Released: April 14, 2004**

By the Assistant Chief, Audio Division:

1. At the request of McCody Broadcasting Group, Inc. ("McCody"), the Audio Division has before it the *Notice of Proposed Rule Making* ("Notice") in this proceeding,¹ proposing the allotment of Channel 246A at Cameron, Arizona,² as that community's first local aural transmission service. McCody filed comments. NPR Phoenix, LLC ("NPR Phoenix"), 3 Point Media-Arizona, LLC ("3 Point"),³ and Tusayan Broadcasting Company, Inc. ("Tusayan") each filed a counterproposal. For the reasons discussed below, we are allotting Channel 247C at First Mesa and Channel 273C1 at Grand Canyon Village, Arizona. To accommodate these allotments we are: (1) reallocating Channel 248C, Station KVNA-FM, from Flagstaff to Dewey-Humboldt, Arizona, and modifying the Station KVNA-FM license to specify Dewey-Humboldt as the community of license; (2) substituting Channel 269C3 for a vacant allotment of Channel 246C3 at Bagdad, Arizona; (3) substituting Channel 231C2 for Channel 247C2, Station KRXS-FM, at Globe, Arizona, and modifying the Station KRXS-FM license to specify operation on Channel 231C2; and (4) substituting Channel 232C2 for Channel 231C1, Station KXKQ(FM), at Safford Arizona, and modifying the Station KXKQ(FM) license to specify operation on Channel 232C2 at new reference coordinates.

2. In response to the *Notice*, we received three Counterproposals. After the filing of their respective Counterproposals, two of the three counterproponents, 3 Point and NPR Phoenix, discovered that their

¹ *Cameron, Arizona*, 17 FCC Rcd 5944 (MB 2002).

² Cameron is a Census Designated Place with a 2000 U.S. Census population of 978 persons.

³ The counterproposal was filed by Arizona Radio Partners, LLC, the predecessor in interest for 3 Point Media-Arizona, LLC. 3 Point has committed to pursuing the allotment proposals advanced by Arizona Radio Partners, LLC.

counterproposals were mutually exclusive.⁴ To remove the conflicts in this proceeding and to facilitate allotments in other pending proceedings, 3 Point and NPR Phoenix (hereinafter, "Joint Parties") filed Joint Reply Comments proposing a "Global Resolution." In their Global Resolution, the Joint Parties propose the allotment of Channel 273C1 at Grand Canyon Village, Arizona, and the allotment of Channel 247C at First Mesa, Arizona, both as first local services.⁵ The Joint Parties propose the allotment of Channel 293A or 293C1 at Cameron, instead of the *Notice* proposal to allot Channel 246A.⁶ In order to accommodate the allotment of Channel 247C at First Mesa, the Joint Parties propose the reallocation of Channel 248C, Station KVNA-FM, from Flagstaff, Arizona, to Dewey-Humboldt, Arizona.⁷ In order to accommodate the reallocation of Channel 248C at Dewey-Humboldt, the Joint Parties propose the substitution of Channel 269C3 for a vacant allotment of Channel 246C3 at Bagdad, Arizona. To further accommodate the reallocation of Channel 248C at Dewey-Humboldt, the Joint Parties propose the substitution of Channel 231C2 for Channel 247C2, Station KRXS-FM, at Globe, Arizona.⁸ In order to accommodate the proposal for Globe, the Joint Parties ask that Channel 231C1, Station KXKQ(FM) at Safford, Arizona, be downgraded to Channel 232C2 and relocated at new facilities north of its present location.⁹ The Joint Parties also propose the substitution of Channel 232C3 for Channel 280C3 at Chino Valley, Arizona, and the upgrade of Channel 280C2 to Channel 280C1 at Gilbert, Arizona. Finally, in an attempt to coordinate the proposals in this proceeding with proposals under consideration in other dockets, the Joint Parties include in their Global Resolution the following allotment requests: Channel 267A at Ash Fork, Arizona, Channel 282C at Lake Montezuma, Arizona, and Channel 252C3 at Parker, Arizona.¹⁰

3. Tusayan Broadcasting Company, Inc. ("Tusayan") filed a counterproposal requesting that Channel 293C1 be allocated to Cameron, Arizona, instead of Channel 246A, as proposed by McCook. Tusayan advocates the allotment of a Class C1 station at Cameron, rather than the Class A allotment proposed by McCook. Tusayan also submitted reply comments, in which it objected to the proposed allocations at Grand Canyon Village and First Mesa.¹¹ In its reply comments, Tusayan proposed, for the

⁴ Specifically, the NPR Phoenix proposal for a Channel 246C1 allotment at Grand Canyon Village conflicts with the 3 Point proposal for a Channel 247C allotment at First Mesa. Both of those proposals conflict with the allotment of Channel 246A at Cameron, Arizona, as proposed in the *Notice*.

⁵ The First Mesa allotment proposal conflicts with the *Notice*'s proposed allotment of Channel 246A at Cameron, Arizona. In order to resolve the conflict of that proposed allotment with NPR Phoenix's original proposal to allot Channel 246C1 at Grand Canyon Village, the Joint Parties proposed, instead, the allotment of Channel 273C1 at Grand Canyon Village.

⁶ In their initial comments, 3 Point had proposed the allotment of Channel 289A at Cameron, and NPR Phoenix had proposed the allotment of any one of several alternative channels: Channel 284A, 288A, 290A, 293A, or 294A.

⁷ 3 Point is the owner of Station KVNA-FM, operating on Channel 248C at Flagstaff.

⁸ The licensee of Station KRXS-FM has consented to the substitution of Channel 231C2 for Channel 247C2 at Globe, Arizona.

⁹ The licensee of Station KXKQ(FM) has consented to the proposed downgrade, substitution, and relocation at Safford, Arizona.

¹⁰ Those other dockets are MM Docket No. 01-69 and MB Docket No. 02-12. See n. 14, *infra*.

¹¹ Tusayan argues that the population of Grand Canyon Village is "more or less transient," and that allocation of Channel 247C to the village as its third aural service and second commercial service would be unnecessary and superfluous. Although Tusayan represents that Station KSGC(FM) serves Grand Canyon Village, that station is, in fact, licensed to Tusayan, Arizona, not Grand Canyon Village. Moreover, no other AM or FM stations is currently licensed to Grand Canyon Village. Tusayan also opposes the allotment of Channel 246C1 at First Mesa, contending that the small population of 1,124 persons does not warrant the allotment of a third Class C station. As with Grand
(continued....)

first time, that Channel 246C1 be allotted to Marble Canyon, Arizona, rather than the allotments to Grand Canyon Village and First Mesa advocated by the Joint Parties.

4. Following the submission of comments and reply comments, McCody submitted a motion seeking to withdraw its petition for rule making. McCody stated that, for business reasons, it has decided not to pursue authorization for a new commercial FM station to serve the community of Cameron, Arizona. McCody included with its motion a sworn Certificate of No Consideration, attesting that it had not and will not receive any money or other consideration in exchange for the withdrawal of its petition for rule making.

5. At the outset, we grant the request of McCody to withdraw its initial proposal for the allotment of Channel 246A at Cameron, Arizona. We also exclude from consideration several other proposals set forth in this proceeding. Tusayan's proposal to allot Channel 293C1 at Cameron, which does not conflict with the proposal set forth in the *Notice* nor with any other proposal in this proceeding, is not a valid counterproposal and thus will not be considered in this proceeding.¹² Likewise, the alternative allotments at Cameron proposed by the Joint Parties do not conflict with the *Notice* proposal nor with any other valid proposal in this proceeding, and neither 3 Point nor NPR Phoenix has expressed an interest in acquiring a license to provide service to Cameron. Moreover, the proposed alternative allotments at Cameron are superfluous in light of McCody's withdrawal of its proposal. We therefore exclude the alternative proposals for allotments at Cameron from consideration in this proceeding. Next, Tusayan's proposal in its reply comments that Channel 246C1 be allotted to Marble Canyon, Arizona, was not timely filed and is therefore not a valid counterproposal in this proceeding.¹³ Finally, it is not necessary to consider several components of the Global Resolution, specifically, the proposals for Ash Fork, Chino Valley, Gilbert, Lake Montezuma, and Parker, Arizona, due to actions in other docketed proceeding.¹⁴

6. In resolving conflicts between mutually exclusive FM allotments, we normally rely on the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.¹⁵ After careful review of the entire record in this proceeding, we are able to accommodate the remaining components of the proposals set forth in this proceeding. We allot Channel 247C to First Mesa, Arizona. This allotment

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Canyon Village, there is no AM nor FM station currently licensed to First Mesa. Tusayan's criticisms of the proposed allotments at First Mesa and Grand Canyon Village are without merit.

¹² Tusayan stated its interest in applying for Channel 293C1 at Cameron, Arizona, in the event that such an allocation is made. In order to allow consideration of Tusayan's proposal, we are issuing a concurrent *Notice of Proposed Rule Making* proposing the allotment of Channel 293C1 at Cameron, Arizona.

¹³ In addition, Tusayan did not express an interest in applying for a license to provide service using the proposed new allotment of Channel 246C1 at Marble Canyon, Arizona.

¹⁴ In order to coordinate with then-pending proceedings in MB Docket No. 02-12 and MM Docket No. 01-69, the Joint Parties proposed, in their "Global Resolution," allotments at Ash Fork, Parker, and Lake Montezuma, Arizona. Due to actions in MB Docket No. 02-12 and MM Docket No. 01-69, the Joint Parties' proposals for Ash Fork, Parker, and Lake Montezuma need not be addressed further in this proceeding. See *Ash Fork, Arizona*, 18 FCC Rcd 24,706 (MB 2003), *Parker, Arizona*, 17 FCC Rcd 9578 (MB 2002). In addition, the proposed allotments at Gilbert and Chino Valley contained in NPR Phoenix's counterproposal and incorporated in the Global Resolution were granted on reconsideration in *Ash Fork*, and therefore need not be further considered here. See DA 04-911 (adopted April 2, 2004) in MB Docket No. 02-12.

¹⁵ 90 F.C.C. 2d 88 (1982). The FM allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. Equal weight is given to priorities (2) and (3).

will provide a first local service for First Mesa, a Census Designated Place of 1,124 persons, and will provide a second aural reception service to over 4,400 persons in the surrounding area. We also allot Channel 273C1 to Grand Canyon Village, Arizona, thus providing a first local service to Grand Canyon Village. Grand Canyon Village is a Census Designated Place with a 2000 U.S. Census population of 1,400 persons. Both First Mesa and Grand Canyon Village are communities, for purposes of our allotment policies, and we find that allotment of Channel 247C at First Mesa and allotment of Channel 273C1 at Grand Canyon Village will serve the public interest.

7. In order to accommodate the allotment of Channel 247C at First Mesa, we are making several other allotment changes. We are reallocating Channel 248C from Flagstaff, Arizona, to Dewey-Humboldt, Arizona, and we are modifying the Station KVNA-FM license to specify Dewey-Humboldt as the community of license. Flagstaff, with a 2000 U.S. Census population of 52,894 persons, will continue to receive local service from five commercial FM and AM stations and three educational FM stations.¹⁶ The reallocation will provide Dewey-Humboldt with a first local service and create a net gain of 1,732,088 persons served.¹⁷ Dewey-Humboldt is a Census Designated Place with a population of 6,295 persons. After the reallocation, Station KVNA-FM will provide 70 dBu coverage over 100 percent of the Prescott, Arizona, Urbanized Area. 3 Point therefore provided a *Tuck* analysis to establish the independence of Dewey-Humboldt from Prescott.¹⁸ Based on that information,¹⁹ we find that Dewey-Humboldt, Arizona, is a community for purposes of our allotment policies, and that Dewey-Humboldt is independent of Prescott, Arizona. For all of the reasons discussed, we find that reallocation of Channel 248C at Dewey-Humboldt would serve the public interest.

8. To further accommodate Channel 247C at First Mesa, we will substitute Channel 269C3 for the vacant allotment of Channel 246C3 at Bagdad, Arizona. In conjunction with the change of community from Flagstaff to Dewey-Humboldt for Channel 248C, we are substituting Channel 231C2 for Channel 247C2 at Globe Arizona, and we are modifying the Station KRXS-FM license to specify operation on Channel 231C2. Finally, to accommodate the Channel 231C2 substitution at Globe, we are substituting Channel 232C2 for Channel 231C1 at Safford, Arizona, and modifying the license of Station

¹⁶ Three commercial FM stations, KAFF-FM, KMGH(FM), and KLOD(FM), operating on Channels 225C, 230C, and 261C1, respectively, will continue to provide local service to Flagstaff, as will KAFF-AM and KVNA-AM. Flagstaff also receives local service from three educational FM stations, KNAU(FM), KJTA(FM), and KPUB(FM), operating on Channels 204, 210, and 219, respectively. Finally, there is a vacant FM allotment at Flagstaff, Channel 279C3.

¹⁷ In the gain area the allotment will provide a second service to 227 persons in 331 square kilometers, a third service to 1,858 persons 1,303 square kilometers, a fourth service to 220 persons in 762 square kilometers, and a fifth service to 1,124 persons in 1,401 square kilometers. In the loss area, the allotment will leave 209 persons in 1,056 square kilometers with no service, 769 persons in 919 square kilometers with one service, and 20 persons in 218 square kilometers with four services.

¹⁸ 3 Point supplied this analysis in its "Supplement to Counterproposal," filed February 24, 2004. When the counterproposal was originally filed, available Census data did not show Prescott as an Urbanized Area. We therefore find good cause for accepting 3 Point's supplement.

¹⁹ Dewey-Humboldt's population is approximately 18.5 percent of that of Prescott, and Dewey-Humboldt is over 16 kilometers away from Prescott, which is not contiguous to Dewey-Humboldt. Dewey-Humboldt has its own zip codes, commercial establishments, and health facilities. Dewey-Humboldt has its own schools, and fire protection is provided by Yavapai County. Dewey-Humboldt has no local government, but on July 11, 2003, the residents of Dewey-Humboldt, represented by the Dewey-Humboldt Community Organization, filed a petition of incorporation with Yavapai County. 3 Point has established that Dewey-Humboldt has an advertising market that is separate and distinct from that of Prescott, and that Dewey-Humboldt residents perceive their community as separate from Prescott.

KXKQ(FM) to specify operation at a new transmitter site at Safford, Arizona. 3 Point has agreed to reimburse the licensees of Stations KXRS-FM and of KXKQ(FM) for their costs of changing channels at Globe and Safford, respectively.

9. Channel 247C can be allotted to First Mesa, Arizona, consistent with the engineering requirements of the Commission's Rules, at coordinates of 35-41-09 NL and 110-21-43 WL, with a site restriction of 16.8 kilometers (10.5 miles) south of First Mesa. Channel 273C1 can be allotted to Grand Canyon Village, Arizona, consistent with the engineering requirements of the Commission's Rules, at city reference coordinates of 36-02-47 NL and 112-09-12 WL, with no site restriction required. Channel 248C can be allotted to Dewey-Humboldt, Arizona, consistent with the engineering requirements of the Commission's Rules, at coordinates of 34-14-42 NL and 112-21-27 WL, with a site restriction of 33.3 kilometers (20.7 miles) south of Dewey-Humboldt. Channel 269C3 can be substituted for Channel 246C at Bagdad, Arizona, consistent with the engineering requirements of the Commission's Rules, at coordinates of 34-36-11 NL and 113-12-04 WL, with a site restriction of 2.5 kilometers (1.5 miles) north of Bagdad.²⁰ Channel 231C2 can be substituted for Channel 247C2 at Globe, Arizona, consistent with the engineering requirements of the Commission's Rules, at coordinates of 33-17-37 NL and 110-50-09 WL, with a site restriction of 12.1 kilometers (7.5 miles) southwest of Globe.²¹ Channel 232C2 can be substituted for Channel 231C1 at Safford, Arizona, consistent with the engineering requirements of the Commission's Rules, at coordinates of 32-51-02 NL and 109-32-15 WL, with a site restriction of 16 kilometers (9.9 miles) east of Safford.²²

10. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective June 1, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission's rules, IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Bagdad, Arizona	269C3, 276C3
Dewey-Humboldt, Arizona	248C
First Mesa, Arizona	247C
Flagstaff, Arizona	225C, 230C, 261C2, 279C3

²⁰ Mexican concurrence was received on March 8, 2004, for the allotment of Channel 269C3 at Bagdad, Arizona, at the reference coordinates indicated above.

²¹ Mexican concurrence was received on March 8, 2004, for the allotment of Channel 231C2 at Globe, Arizona, at the reference coordinates indicated above.

²² The allotment of Channel 232C2 at Safford, Arizona, is conditioned upon concurrence by Mexico, because the allotment is located within 320 kilometers (199 miles) of the Mexican border. Although concurrence from Mexico has been requested for Channel 232C2 at Safford, Arizona, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified for Safford herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the USA-Mexico FM Broadcast Agreement."

Globe, Arizona	231C2, 262C
Grand Canyon Village, Arizona	273C1
Safford, Arizona	232C2

11. Filing windows for Channel 269C3, Bagdad, Arizona; Channel 247C, First Mesa, Arizona; and Channel 273C1, Grand Canyon Village, Arizona, will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

12. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of 3 Point Media-Arizona, LLC for Station KVNA-FM, Flagstaff, Arizona, IS MODIFIED to specify operation on Channel 248C at Dewey-Humboldt, Arizona, subject to the following conditions:

(a) Within 90 Days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing.

13. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Linda C. Potyka for Station KRXS-FM, Globe, Arizona, IS MODIFIED to specify operation on Channel 231C2 in lieu of Channel 247C2, subject to the following conditions:

(a) Within 90 Days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing.

14. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of McMurray Communications, Inc. for Station KXXQ-FM, Safford, Arizona, IS MODIFIED to specify operation on Channel 232C2 at Safford, Arizona, subject to the following conditions:

(a) Within 90 Days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing.

15. Pursuant to Commission Rule Section 1.1104(3)(l), any party seeking a change of community of license of an FM allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, 3 Point Media-Arizona, LLC, licensee of Station KVNA-FM, is required to submit a rule making fee in addition to the fee required for the application to effect the change in its community of license.

16. IT IS FURTHER ORDERED That MM Docket No. 02-73 IS TERMINATED.

17. For further information concerning this proceeding, contact Deborah A. Dupont, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau